

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

CONVOLVE, INC.

vs.

DELL, INC., ET AL

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CASE NO. 2:08-CV-244-CE

ORDER

Pending before the court is defendant Dell, Inc.’s motion for summary judgment of non-infringement of method Claims 7 and 10 of the patent-in-suit (Dkt. No. 332).

To prove direct infringement of a method claim, Convolve must either prove that Dell performs each and every step of the method or, if the steps are performed by multiple parties, that Dell controls or directs every step of the process. *See Muniauction, Inc. v. Thomson Corp.*, 532 F.3d 1318, 1329 (Fed. Cir. 2008). Dell argues that it is entitled to summary judgment because: (1) it does not perform the “altering settings in the user interface” limitation recited in Claim 7; (2) it does not perform the “operating the user interface so as to alter settings” limitation in Claim 10; and (3) it does not direct and control its end users to perform either of these steps. Having carefully reviewed the parties’ arguments and the evidence presented by Plaintiff in opposition to Dell’s motion, the court concludes that there is at least a genuine issue of material fact as to whether Dell directs its end users to perform the “altering settings” and “operating...to alter settings” limitations of Claims 7 and 10. Accordingly, the court DENIES Dell’s motion for summary judgment of non-infringement.

SIGNED this 12th day of July, 2011.


CHARLES EVERINGHAM IV
UNITED STATES MAGISTRATE JUDGE